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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/864,670 | 05/24/2001 | Tetsuo Nishimoto | 393032025300 | 3831 |
| 25224 | 7590 | 04/13/2004 | EXAMINER | |
| MORRISON & FOERSTER, LLP 555 WEST FIFTH STREET SUITE 3500 LOS ANGELES, CA 90013-1024 | | | FLETCHER, MARLON T | |
| | | ART UNIT | PAPER NUMBER | 2837 |

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|--|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/864,670 | NISHIMOTO ET AL. <i>[Signature]</i> |
| | Examiner | Art Unit |
| | Marlon T Fletcher | 2837 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05/24/2001.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-5, 7-11, 13-28, 30, 31 and 33-36 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-4, 7-10, 13-28, 30, 31 and 33-36 is/are rejected.

7) Claim(s) 5 and 11 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 7-10, 13-28, 30, 31, and 33-36, are rejected under 35 U.S.C. 103(a) as being unpatentable over Toriumi (6,062,868) in view of Aoki.

Toriumi discloses an apparatus and method for transmission and reception of music data as well as image data, wherein the music data includes melody data as seen in figure 1. Music data and image data are transmitted to a server (33 and 32 respectively) wherein the server includes a receiver for receiving the data. The server imparts additional data into the music data as well as the video data as discussed in column 5, lines 1-40. The additional data is a parameter. New content data is created by the additional data, wherein the addition provides a conversion. Figures 1-3 provide views of the apparatus and operation. Although, it is inherent that there is bi-directional communication between the client and server, the reference does not use the word "client".

However, Aoki discloses a client terminal coupled to a server over a bi-directional communication network, the client terminal comprising: an input device for inputting melody (abstract) including content data; a transmitter (figure 4) operatively coupled with the input to transmit the melody information to the server (column 13, line 66

through column 14, line 5) and a receiver adapted to receive content information from the server imparting an additional value (including parameters) to the melody information transmitted to the transmitter (abstract; column 7, lines 5-44; and column 14, lines 1-22).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings Aoki with the apparatus of Toriumi, because the combination clearly provides transmission of melody data between a client and a server, wherein data is added to the transmission.

Allowable Subject Matter

3. Claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments with respect to claims 1-5, 7-11, 13-28, 30, 31, and 33-36, have been considered but are moot in view of the new ground(s) of rejection.

It is believed that Toriumi reads on the claimed limitations. As claimed, Toriumi discloses each element and function, wherein a melody is transmitted to a server, the server adds additional data and transmit the created data. The applicant argues the feature of the client terminal. Although, it is inherent, the examiner has applied a second reference clearly providing the client terminal. The examiner agrees with the

applicant in regards to the claims regarding the left hand and right hand data transmissions. Those claim are objected, wherein if rewritten to incorporate the independent claim, those claims would be allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2063. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications.



Marlon T Fletcher
Primary Examiner
Art Unit 2837

MTF
April 4, 2004